

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

FREDERICK M. HEON, JR.

v.

CA 12-44 ML

RI ATTORNEY GENERAL'S OFFICE  
and ASHBEL T. WALL

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's objection to the Report and Recommendation issued by Magistrate Judge Martin on July 25, 2012. Although this Court appreciates Petitioner's frustration with the length of time it has taken for him to secure a hearing on the merits of his claim in the Rhode Island Superior Court, this Court is also mindful of the requirement of respecting comity between the federal and state court systems. Accordingly, this Court adopts the Report and Recommendation with one minor exception. At page 16 of the Report and Recommendation, Magistrate Judge Martin writes that he would recommend the issuance of a conditional order requiring the state supreme court rule on Petitioner's PCR claims within 90 days. This Court would have ordered the State to prosecute the appeal within 90 days. See Simmons v. Reynolds, 898 F.2d 865, 869 (2<sup>nd</sup> Cir. 1990).

The petition is DISMISSED without prejudice.

SO ORDERED:

/s/ Mary M. Lisi  
Mary M. Lisi  
Chief United States District Judge  
August 7, 2012